

THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.14821 of 2004

DATED: 26-07-2005

Ch. Mallesh.

..... PETITIONER

AND

The Sadhashivpet Municipality,
rep., by its Commissioner, Medak & two others.

.....RESPONDENTS

—

—

—

—

—

—

—

—

—

—

—

—

—

—

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

-

ORAL ORDER:

In response to the tender notification issued by the 1st respondent-Municipality, for construction of a building for municipal office, petitioner and two others went to the office of the 1st respondent and purchased the Tender Schedules. Alleging that at that time 3rd respondent i.e. Chairman of the 1st respondent-Municipality called him into his chambers and asked him and the other intending tenderers to form a cartel and thereafter the person chosen by him will have to file the tender by quoting a high amount, and when that tender is accepted, the profit derived can be shared by all the four of them and that he did not agree for that proposal, and submitted his tender offering 1.5% less than the estimated rates and so, 3rd respondent with a view to spite him, instead of accepting his tender got the tender cancelled, without giving any reasons and called for fresh tender, petitioner filed this petition questioning the cancellation of the tender and calling a fresh tender.

2. On behalf of the 1st respondent-Municipality, its Commissioner, i.e. 2nd respondent, filed his counter affidavit, inter alia contending that out of the three persons who purchased the tender schedules only petitioner submitted his tender quoting 1.5% less than the estimated costs, but when the matter was placed before the municipal council, it unanimously resolved to cancel the tender and decided to call for a fresh tender by its resolution C.R.No.188, dated 30-07-2004, and since the tender in which petitioner participated was cancelled and a fresh tender is called for, petitioner is not entitled to any relief. Though served 3rd respondent did not enter appearance.

3. The contention of the learned counsel for the petitioner is that as per the tender rules and notification, purchasers of the tender schedule should have to submit their bids and their failure to submit bid would result in forfeiture of their earnest money deposit and black listing also, and in spite of such stringent conditions two other purchasers of the tender schedule failing to submit their bids, would establish the truth of the allegations of the petitioner relating to the design conceived by the 3rd respondent to unjustly enrich himself and the cancelling of the tender, due to the petitioner's failure to accept the plan of the 3rd respondent and contended that the fact that 3rd respondent, against whom the specific allegations of mala fides are made, did not even make appearance clearly shows that those allegations are true.

4. The contention of the learned standing counsel for the 1st respondent Municipality is that since as per the Tender Rules, 1967, the authority, competent to accept the tenders, has the right to reject any or all of the tenders received without assigning any reasons and since the council of the 1st respondent in a meeting presided over by the Vice-Chairperson, but not the 3rd respondent, resolved to cancel the tender and call for fresh tenders, petitioner is not entitled to any relief.

5. In the counter affidavit of 2nd respondent, filed on his behalf and on behalf of 1st respondent, it is alleged -

"I beg to state that the petitioner made false and frivolous allegations against the Chairperson in paragraph 3 as I could ascertain the facts from the Chairperson. He also informed me that he is filing his counter and will be initiating such legal action against the writ petitioner for the baseless and mischievous allegations made against him."

Therefore, it is clear that 3rd respondent having knowledge about the allegations made against him chose to remain ex parte. Since the explanation in the affidavit of 2nd respondent is in the nature of hearsay it cannot be relied or acted upon. So, I accept the contention of the petitioner that 3rd respondent called and asked him and others to form a cartel and that he (3rd respondent) would choose as to who should file a tender and at what rates and that the profits can be shared by all.

6. In my considered opinion, Rule 4(2)(vii) of the Tender Rules, 1967 (the Rules), relied on by the learned standing counsel for the 1st respondent has no application to the facts of this case because it relates to the contents of a tender notice to be published. So, till such right mentioned in Rule 4(2)(vii) of the Rules is expressly reserved, by invoking that clause a tender cannot be cancelled without assigning any reason. In this case, there, admittedly, is no clause in the tender notification reserving a right to cancel the tender without assigning any reasons. Since the allegations made by the petitioner against the 3rd respondent appear to be true and since the 1st respondent did not reserve the right to cancel the tender without assigning any reasons, cancellation of the tender by the 1st respondent without assigning any reasons, is not only improper but is also vitiated by mala fides and hence cancellation of the tender and calling for fresh tenders are unsustainable and hence are liable to be quashed.

7. Accordingly, the writ petition is allowed with costs against the 3rd respondent. Rule Nisi is made absolute. Advocate fee is fixed at Rs.1,000/- (Rupees one thousand only) to be paid by the 3rd respondent.

(C.Y.Somayajulu, J.)

26th July, 2005.

Tsy/Cvrk